IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL No.1498 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 05-09-2002 in WP No.14440 OF 2002 on the file of the High Court.)

Between:

1 Sir C.R. Reddy Law College Employees Association

(Regd.No.83/97),Eluru.W.G.Dist.
rep.by its Secretary and Staff Representative of

the Governing Body of Sir C.R.R. Law College
Mr.Ch.N.V.Manikalarao

2 Dr.B. Hanumaiah Choudary S/o. Ankamma
Eluru W.G.Dist.

3 K.Muralikrishna S/o.Late Peda Guravaiah
Eluru W.G.Dist.

4 M.Prahabakararao S/o.M.V.R.K.Anandarao
Eluru W.G.Dist.

5 E.Ranga Rao S/o.Appalaswamy
Eluru W.G.Dist.

..... APPELLANT(S)

AND

1 The Bar Council of India Rep.by its Secretary.
21, Rouse Avenue Institutional Area New Delhi

2 Andhra Universtiy Rep.by its Registrar.
Visakhapatnam

3 The State of A.P Rep.by its Prl.Secretary to Govt,

Education Dept., Secretariat Building, Saifabad
Hyderabad.

4 A.P.State Council of Higher Education

Rep.by its Secretary, Hyderabad.

5. The Convenor, Lawcet-2002

Sri Padmavathi Mahila Viswa Vidyalayam
Tirupathi Chittoor Dist.

6 Sir C.R.R.College Rep.by its Secretary,

Eluru, W.G.Dist.

7 Sir C.R.R.Law College, Eluru,

Rep.by its Correspondent

8 The District Collector & Magistrate
W.G.Dist., Eluru.

.....RESPONDENT(S)

Counsel for the Appellants: MR.K. Chidambaram.
Counsel for Respondent No.1: Ms. L. Sudha Rani.
Counsel for Respondent No.2 : GP for Higher Education.
Counsel for Respondent No.3 : Mr. T. Rajendra Prasad.
Counsel for Respondent No.4 : Mr. K. Ramesh Babu.
Counsel for Respondent No.5 : Mr. T.S. Harinath.
Counsel for Respondent No.6 & 7 : Mr. C. Kodanda Ram.

The Court made the following :

JUDGMENT:(Per Hon'ble Sri Justice B. Sudershan Reddy)

The unsuccessful writ petitioners are the appellants in this Writ Appeal. Learned single Judge dismissed the writ petition filed by the appellants challenging the order of the

1st respondent-Bar Council of India, dated 15-07-2002, permitting the closure of Sir C.R.R. Law College, Eluru. Hence, this appeal.

The 7th respondent, Sir C.R.R. Law College, Eluru, was established by the Management of Sir C.R.R. College, Eluru, (for short 'the Management of the College') in the year 1977. The Government of Andhra Pradesh vide G.O. Ms. No.943 (Education) dated 22-09-1977, accorded permission to start Law course in Sir C.R.R. College, Eluru, by the Management of the said College subject to certain terms and conditions which are not required to be noticed in detail. The

Andhra University vide its proceedings dated 02-01-1984 granted permanent affiliation. Initially the Law College was running

3-year Law degree course and thereafter 5-year Law degree course was introduced. That so far as the 5-year Law degree course is concerned, its strength is 400 (One Section of 80 candidates for each year). The University Grants Commission appears to have extended financial assistance for the purpose of establishing a Library. The College had an attached hostel maintained out of the aid given by the Government. For whatever reasons, the Management of the College had ordered closure of the hostel with which we are not concerned for the present in this Writ Appeal.

That according to the appellants, the closure of the hostel resulted in substantial depletion in the admissions of students into both 5-year and 3-year Law degree courses. The closure of the hostel was a device adopted by the Management of the College to closedown the Law College without any reason or justification.

The Management of the College vide its application dated 25-06-2001 sought permission to closedown the 5-year LL.B. degree course besides stopping the admission in the first year during 2001-2002 academic year. According to the Management of the College, it was incurring huge deficit year after year and unable to bear the increasing burden in spite of the best intentions to serve the society and the students at large. The details of decreasing trend in admissions in the

5-year law degree course, year by year have been furnished. The details of financial implications involved in the matter were also stated in the application.

The Bar Council of India having considered the representations made by the Management of the College dated 02-07-2001 and 02-03-2002 regarding 3-year Law degree course and the representation dated 27-05-2001 regarding 5-year Law degree course, accorded its approval to permit the Management of the College to closedown the 3-year and 5-year Law degree courses with effect from 2002-2003. The decision of the Legal Education Committee taken at its meeting held on 28th & 29th June, 2002, permitting the Management of the College to closedown the 3-year and 5-year Law courses imparted in the College were accordingly communicated to the Management of the College. That order is impugned in the writ petition.

The case of the appellants is that the decision of the 6th respondent-Management of the College to close the Law College is absolutely without any basis. The Management of the College had treated the Law College as a commercial venture and no interest was shown to continue the Law College. The decision of the Bar Council of India in according permission to closedown the Law College is contrary to the public interest apart from being opposed to the objects underlying The Advocates Act, 1961, and the rules governing the functions of the Bar Council of India.

The Management of the College filed a detailed counter affidavit *inter alia* explaining the circumstances, which led to the decision taken by the Managing Committee to close the Law College. The main plea taken by the Management of the College is that having regard to the fall in admissions in the first year of the Law degree course year after year, they were sustaining huge financial loss and it was not feasible to continue the Law College.

Sri Nuty Ram Mohan Rao, learned counsel appearing for the appellants, strenuously contended that the Bar Council of India in a very casual and mechanical manner accorded permission to closedown the 3-year and 5-year B.L. regular courses with effect from 2002-2003. The order does not reflect any application of mind by the Bar Council of India. That no reasons are recorded in support of its conclusion to accord permission to the Management of the College to closedown the 3-year and 5-year B.L. regular courses. Public interest parameters have not been kept in view by the Bar Council of India while permitting the closure of the College. The order is violative of principles of natural justice inasmuch as no notice has been issued to the appellants who are undoubtedly entitled to a notice and hearing being vitally interested in continuance of the Law College as they represent the employees both teaching and non-teaching staff. It was also contended that closure of the law College in the absence of permission given by the Government is bad in law.

Sri C. Kodanda Ram, learned counsel appearing on behalf of the Management of the College, submitted that in spite of possible steps to maintain the standards, on account of variety of reasons beyond the control of the Management it has become impossible to manage the Law College. That having explored all the possibilities to continue the Law College, the Management had as a last resort, decided to close the Law College. The closure of the hostel has absolutely nothing to do with the admissions of the students into the Law College. The strength in the Law College started falling down year after year, rendering it virtually impossible to continue the Law College.

Sri C. Kodandaram, further contended that a Writ of *Mandamus* does not

lie as against the Management of the College compelling it to run the Law College. The Management of the College is not under any legal or constitutional obligation to run the Law College and continue to impart legal education. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue a Writ in the nature of *Mandamus* to perform an impossible task. It was further contended that there is no law, which requires the Management of the College to apply for and seek any permission to closedown the Law College.

The representations/letters addressed by the Management of the Committee to various authorities including the Bar Council of India for closing the Law College are self-explanatory. In specific and clear terms, the Management of the College stated that on account of decreasing strength of the students and increasing financial deficit year after year, it has become impossible for the Management of the College to continue the Law College. The details of accounts as well as the sanctioned strength and number of students actually admitted into the course from 1997-1998 onwards were furnished for perusal of the authorities. Admittedly, the Management of the College does not receive any grant-in-aid or financial assistance from the Government.

Firstly, the question that arises for consideration is whether the Management of the College is under any constitutional or legal obligation to provide legal education irrespective of its inability to manage the Law College ? Is there any corresponding right vested in any of the appellants/petitioners to insist for continuance of the Law College to impart legal education ?

It is pertinent to note that no student had approached the Court seeking

any directions as against the Management of the College to run the Law College. The Management Committee, in fact protected the interest of the student community by undertaking that it will run 5-year LL.B. degree course until the present batch of students who were already admitted in the College complete their studies in order to avoid any inconvenience to them although it involves huge financial commitment to the Management of the College, since College is an un-aided and self-financing institution.

It is true that running of management of educational institutions cannot be equated to that of any trade or commerce. The managements of educational institutions are not expected to derive any profits by converting the educational institutions into profit making bodies. But in the absence of any grant-in-aid and financial assistance, the managements are entitled to make an appropriate and pragmatic assessment for themselves as to whether it would be feasible to run any particular educational institution in the absence of financial viability. The managements may not be allowed to make any profits but they cannot be compelled to run the institution irrespective of financial implications.

There is no right vested in the appellants/petitioners to insist for continuance of the Law College nor the Management of the College is under any legal or constitutional obligation to run the Law College irrespective of the financial viability. The complaint of the Management of the College is that it has become impossible to run the Law College on account of ever decreasing admission of students into the course resulting in huge financial loss. The appellants/petitioners cannot insist the Management of the College to run the Law College notwithstanding the financial implications involved and its inability

to efficiently and prudently run the College.

Whether the provisions of the A.P. Education Act, 1982, mandates any prior permission to closedown the educational institution ?

The Management of the College in its applications may have used inartistic expressions seeking permission to closedown the institution. But the question still remains is whether law requires any such prior permission ?

Section 20 of the A.P. Education Act, 1982 (for short 'the Act') mandates that on and from the commencement of the A.P. Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of the Act. It prescribes the procedure for grant of permission for establishment of educational institutions. Permission for establishment of educational institution is a mandatory requirement. That is how the Management of the College applied for and obtained permission to establish the Law College. The Act prohibits establishment of Educational Institutions by the individuals.

Section 26 of the Act mandates that no private institution shall be closed down unless notice of not less than one academic year expiring with the end of any academic year and indicating the intention to do so, has been given by the manager to the officer authorised by the competent authority in that behalf. Failure to give notice as required under
sub-Section (1) of Section 26 may entail prosecution and on conviction be punished with fine which may extend to Rs.5,000/- or with simple imprisonment which may extend to one year or with both and with a fine of Rs.100/- for every

day of further default.

That a bare reading of Section 26 of the Act suggests that no permission is required to closedown or discontinue any private educational institution. What is required is issuance of notice of not less than one academic year expiring with the end of any academic year expressing or indicating the intention to closedown the institution. The Management of the College in the instant case, accordingly issued notice expressing its intention to closedown the Law College/institution. It is unnecessary to go into the question whether the notice issued by the Management of the College satisfies the requirement under Section 26 of the Act for the simple reason, notice issued if does not satisfy the requirement, it shall always be open to the authorities concerned to take appropriate action against the Management of the College. The contention that the College cannot be closed down without the prior approval or permission of the competent authority is not well founded.

It is a different matter altogether where the competent authority steps in to manage the institutions in accordance with the provisions of the A.P. Education Act, 1982.

Is there any requirement in law to seek permission from the Bar Council of India ?

The Bar Council of India vide its letter dated
13-09-1976 accorded permission to the Management of the College to start a Law College at Eluru subject to the inspection of the College by the Council in the near future. The permission was being received from time to time.

The Bar Council of India does not provide any financial assistance to the Colleges. The functions of Bar Council of India, includes promotion of legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils; to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf. Maintenance of standards and permission of legal education is one of the duties and functions of the Bar Council of India.

The requirement of permission from the Bar Council of India to start any Law College is integral and intertwined with the functions of the Bar Council entrusted with duty to permit legal education and to lay down standards of such education which includes the power to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate. Therefore, Law Colleges cannot come into existence without the prior permission of approval of affiliation granted by the Bar Council of India to start any Law College imparting legal education. The Bar Council of India is entitled to visit and inspect the Colleges and the Universities and issue such directions as may be necessary to ensure maintenance of standards in legal education.

Section 15 as well as Section 49 of the Advocates Act, 1961, authorises the Bar Council of India to make rules for discharging its functions under the Act. In exercise of its rule making power, the Bar Council of India is entitled to make rules prescribing the standards of professional conduct and etiquette to be observed by the Advocates; the standards of legal education in India and the

inspection of Universities for that purpose.

The Bar Council of India in exercise of its rule making power framed the Bar Council of India Rules (for short 'the Rules').

Rule 13 of the said Rules *inter alia* provides that the Bar Council of India shall cause a law college affiliated to a University to be inspected by the Committee to be appointed by it for the purpose when an application for approval of affiliation of a new college is received by it or it *suo motu* decides in order to ensure that the standards of Legal Education laid down by it are being complied with.

The Rules prescribed the procedure to be followed for disposal of the applications submitted seeking approval of affiliation of new colleges as well as renewal for approval of affiliation. It is unnecessary to burden this order with the details in that regard.

The requirement in law is approval of affiliation. Law Colleges cannot come into existence without the permission and approval of affiliation by the Bar Council of India. Law Colleges applying for approval of affiliation shall obtain

no-objection for establishment of Law College from the Government or Higher Education Department of the State, if the same is requirement under the prevailing law or any order in the State. But there is no provision or procedure prescribed obligating an institution imparting legal education to obtain prior permission to closedown the institution.

The request made by the Management of the College is in the nature of information furnished to the Bar Council of India not to extend its approval of affiliation or permission to continue Sir C.R.R. Law College. The Convener of Admissions cannot allot any students into the Law Colleges unless such Law Colleges have valid approval of affiliation from the Bar Council of India. The effect of the request of the Management of the College is to delete Sir C.R.R. Law College from the list of approved Law Colleges so that the candidates are not allotted by the Convener of Admissions into Sir C.R.R. Law College. That all the concerned were put on advance notice that the Management of the College intended to discontinue the Law College and no student shall be admitted into the College.

In our considered opinion, law does not require any prior permission or approval as such from the Bar Council of India to closedown any Law College.

PRINCIPLES OF NATURAL JUSTICE:

The question whether any principles of natural justice have been violated by the Bar Council of India in granting approval to the Management of the College to closedown the Law College depends upon the issue as to whether any requirement is there in law to seek permission to closedown the Law College/institution ?

In the light of our conclusion that there is no rquirement in law to apply for and obtain any permission from the Bar Council of India to closedown any Law College, the appellants/petitioners are not entitled to any prior notice or

hearing from the Bar Council of India to consider the request of the Management of the College not to extend any further affiliation to Sir C.R.R. Law College. We find no merit in the submissions that the impugned order of the Bar Council suffers from infraction of principles of natural justice.

That the facts narrated by the Management of the College in its various representations addressed to various authorities including the Bar Council of India about the continuous decrease in the admission of the students into the Law College resulting in adverse financial implications are not seriously disputed. The averments made in the counter affidavit filed by the Management of the College are also not in dispute. The averments are not rebutted. In such view of the matter, even if, a notice was issued to the appellants/petitioners, which, in our considered opinion, would not have made any difference whatsoever and the Bar Council of India was bound to pass the same order. Therefore, no prejudice has been caused to the appellants/petitioners.

We are in complete agreement with the view taken by the learned single Judge that the role of the Bar Council of India is confined only to ensure maintenance of proper standards as and when the Law Colleges are established and as long as such institution exists. The Bar Council of India cannot compel any individual or agency or society to establish a Law College nor can compel anyone to continue the same whatever be the situation.

SCOPE OF WRIT OF *MANDAMUS:*

That under the guise of challenging the orders passed by the Bar Council of India, the appellants/petitioners are virtually asking for a Writ of *Mandamus* directing the Management of the College to continuously run the Law College irrespective of the inconvenience and financial implications involved. The Court cannot issue any such *Mandamus* compelling any private management to perform an impossible act. Even in the absence of the so-called permission granted by the Bar Council of India, the Management of the College could have as well closed down the Law College as it was finding difficulty to manage the Law College any more. Directions cannot be issued by this Court compelling any private management to run the educational institution for the sake of its employees.

It is very well settled that a Writ of *Mandamus* is not a Writ of Course or Writ of Right, but is, as a rule discretionary. Unless the right, which the applicant seeks to enforce is a performance of duty of public nature cannot be secured at all by a *Mandamus.*

A writ of Mandamus will lie to compel to perform any public duties, which the public bodies have failed to perform.

It is not a case where the Management of the College is entrusted with any public duty to impart legal education and failed to perform any such public duty. Therefore a Writ of *Mandamus* does not lie.

The maxim *lex non coget ad impossibilia* which is founded upon justice, good sense and equity is well accepted in Indian Constitutional Law and

invoked even in cases where the performance of duties prescribed by a Statute has been rendered impossible by circumstances over which the persons interested had no control. The circumstances will be taken as valid excuse. The principle was even applied in the matter of enforcement of public law duties as well.

The maxim *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. [For proposition see: **Raj Kumar Dey & Others v. Tarapada Dey & Others**(1987) 4 SCC 398); and

In re Presidential Election, 1974(AIR 1974 SCC 1682)].

I n **Mohammed Gazi v. State of M.P. & Others** the Supreme Court observed:

> "This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia* - the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases."

This maxim applies in all its force to the fact situation on hand.

This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue any *Mandamus* compelling the Management

of the College to perform an impossible task.

For all the aforesaid reasons, we find no merit in this appeal.

The Writ Appeal fails and the same shall accordingly stand dismissed without costs.

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B. SUDERSHAN REDDY, J

Date: 27th JULY, 2004.

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K.C. BHANU

NOTE:

L.R. copy to be marked.

(B/o)

PV

One Fair Copy to the Honourable Sri Justice B. Sudershan Reddy (for his Lordships kind perusal).

One Fair copy to the Honourable Sri Justice K.C. Bhanu (for his Lordships kind perusal)

To

1 The Bar Council of India Rep. by its Secretary.
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7. Sir C.R.R. Law College, Eluru,

Rep. by its Correspondent

8. The District Collector & Magistrate
W.G. District, Eluru.

9. Eight (8) L.R. Copies.

10. The Under Secretary, Union of India,

Ministry of Law, Justice & Company Affairs,

New Delhi.

11. The Secretary, A.P. Advocates Association,

Library, High Court Buildings, Hyderabad.

12. Two C.Cs. to G.P. for Higher Education,
High Court of A.P., Hyderabad.(O.U.T.)

13. Two C.Ds.